

Article - Environment

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§4–202.1.

(a) (1) Except as provided in paragraphs (2) and (3) of this subsection, this section applies to a county or municipality that is subject to a national pollutant discharge elimination system Phase I municipal separate storm sewer system permit.

(2) This section does not apply to a county or municipality that, on or before July 1, 2012, has enacted and implemented a system of charges under § 4–204 of this subtitle for the purpose of funding a watershed protection and restoration program, or similar program, in a manner consistent with the requirements of this section.

(3) Except as provided in subsection (j) of this section, this section does not apply in Montgomery County.

(b) A county or municipality shall adopt and implement local laws or ordinances necessary to establish a watershed protection and restoration program.

(c) (1) A watershed protection and restoration program established under this section:

(i) May include a stormwater remediation fee; and

(ii) Shall include a local watershed protection and restoration fund.

(2) (i) If a county or municipality established a stormwater remediation fee under this section on or before July 1, 2013, the county or municipality may repeal or reduce the fee before July 1, 2016, if:

1. The county or municipality identifies dedicated revenues, funds, or other sources of funds that will be:

A. Deposited into its local watershed protection and restoration fund; and

B. Utilized by the county or municipality to meet the requirements of its national pollutant discharge elimination system Phase I municipal separate storm sewer system permit;

2. Subject to item 3 of this subparagraph, the county or municipality has filed with the Department a financial assurance plan in accordance with subsection (j) of this section; and

3. The Department determines the financial assurance plan demonstrates good faith toward achieving sufficient funding in accordance with subsection (j)(4)(ii) of this section.

(ii) This paragraph may not be construed as prohibiting a county or municipality from repealing or reducing a fee on or after July 1, 2016.

(d) (1) A county or municipality shall maintain or administer a local watershed protection and restoration fund in accordance with this section.

(2) The purpose of a local watershed protection and restoration fund is to provide financial assistance for the implementation of local stormwater management plans through stormwater management practices and stream and wetland restoration activities.

(e) (1) (i) Except as provided in paragraph (2) of this subsection and subsection (f) of this section, a county or municipality may establish and annually collect a stormwater remediation fee from owners of property located within the county or municipality in accordance with this section.

(ii) Beginning fiscal year 2017, if a county funds the cost of stormwater remediation by using general revenues or through the issuance of bonds, the county shall meet with each municipality within its jurisdiction to mutually agree that the county will:

1. Assume responsibility for the municipality's stormwater remediation obligations;

2. For a municipality that has established a stormwater remediation fee under this section or § 4-204 of this subtitle, adjust the county property tax rate within the municipality to offset the stormwater remediation fee charged by the municipality; or

3. Negotiate a memorandum of understanding with the municipality to mutually agree upon any other action.

(2) (i) Except as provided in subparagraphs (ii) and (iii) of this paragraph, property owned by the State, a unit of State government, a county, a municipality, a veterans' organization that is exempt from taxation under § 501(c)(4) or (19) of the Internal Revenue Code, or a regularly organized volunteer fire

department that is used for public purposes may not be charged a stormwater remediation fee under this section.

(ii) 1. Except as provided in subsubparagraph 2 of this subparagraph, property owned by the State or a unit of State government may be charged a stormwater remediation fee by a county under this section if:

A. The State or a unit of State government and a county agree to the collection of an annual stormwater remediation fee from the State or a unit of State government that is based on the share of stormwater management services related to property of the State or a unit of State government located within the county;

B. The county agrees to appropriate into its own local watershed protection and restoration fund, on an annual basis, an amount of money that is based on the share of stormwater management services related to county property on an annual basis; and

C. The county demonstrates to the satisfaction of the State or a unit of State government that the fees collected under item A of this subparagraph and the money appropriated under item B of this subparagraph were deposited into the county's local watershed protection and restoration fund.

2. A county or municipality may not charge a stormwater remediation fee to property specifically covered by a current national pollutant discharge elimination system Phase I municipal separate storm sewer system permit or industrial stormwater permit held by the State or a unit of State government.

(iii) A county or municipality may charge a stormwater remediation fee to property owned by a veterans' organization that is exempt from taxation under § 501(c)(4) or (19) of the Internal Revenue Code or a regularly organized volunteer fire department if:

1. The county or municipality determines that the creation of a nondiscriminatory program for applying the stormwater remediation fee to federal properties under the federal facilities pollution control section of the Clean Water Act is necessary in order for the county or municipality to receive federal funding for stormwater remediation; and

2. A veterans' organization that is exempt from taxation under § 501(c)(4) or (19) of the Internal Revenue Code and a regularly organized volunteer fire department that is used for public purposes are provided with the opportunity to apply for an alternate compliance plan established under

subsection (k)(3) of this section instead of paying a stormwater remediation fee charged by a county or municipality under item 1 of this subparagraph.

(3) (i) If a county or municipality establishes a stormwater remediation fee under this section, a county or municipality shall set a stormwater remediation fee for property in an amount that is based on the share of stormwater management services related to the property and provided by the county or municipality.

(ii) A county or municipality may set a stormwater remediation fee under this paragraph based on:

1. A flat rate;
2. An amount that is graduated, based on the amount of impervious surface on each property; or
3. Another method of calculation selected by the county or municipality.

(4) If a county or municipality establishes a stormwater remediation fee under this section, the stormwater remediation fee established under this section is separate from any charges that a county or municipality establishes related to stormwater management for new developments under § 4–204 of this subtitle, including fees for permitting, review of stormwater management plans, inspections, or monitoring.

(f) (1) If a county or municipality establishes a stormwater remediation fee under this section, the county or municipality shall establish policies and procedures, approved by the Department, to reduce any portion of a stormwater remediation fee established under subsection (e) of this section to account for on-site and off-site systems, facilities, services, or activities that reduce the quantity or improve the quality of stormwater discharged from the property.

(2) The policies and procedures established by a county or municipality under paragraph (1) of this subsection shall include:

(i) Guidelines for determining which on-site systems, facilities, services, or activities may be the basis for a fee reduction, including guidelines:

1. Relating to properties with existing advanced stormwater best management practices;

2. Relating to agricultural activities or facilities that are otherwise exempted from stormwater management requirements by the county or municipality; and

3. That account for the costs of, and the level of treatment provided by, stormwater management facilities that are funded and maintained by a property owner;

(ii) The method for calculating the amount of a fee reduction; and

(iii) Procedures for monitoring and verifying the effectiveness of the on-site systems, facilities, services, or activities in reducing the quantity or improving the quality of stormwater discharged from the property.

(3) For the purpose of monitoring and verifying the effectiveness of on-site systems, facilities, services, or activities under paragraph (2)(iii) of this subsection, a county or municipality may:

(i) Conduct on-site inspections;

(ii) Authorize a third party, certified by the Department, to conduct on-site inspections on behalf of the county or municipality; or

(iii) Require a property owner to hire a third party, certified by the Department, to conduct an on-site inspection and provide to the county or municipality the results of the inspection and any other information required by the county or municipality.

(g) (1) A property may not be assessed a stormwater remediation fee by both a county and a municipality.

(2) (i) Before a county may impose a stormwater remediation fee on a property located within a municipality, the county shall:

1. Notify the municipality of the county's intent to impose a stormwater remediation fee on property located within the municipality; and

2. Provide the municipality reasonable time to pass an ordinance authorizing the imposition of a municipal stormwater remediation fee instead of a county stormwater remediation fee.

(ii) If a county currently imposes a stormwater remediation fee on property located within a municipality and the municipality decides to implement its own stormwater remediation fee under this section or § 4–204 of this subtitle, the municipality shall:

1. Notify the county of the municipality’s intent to impose its own stormwater remediation fee; and

2. Provide the county reasonable time to discontinue the collection of the county stormwater remediation fee within the municipality before the municipality’s stormwater remediation fee becomes effective.

(3) A county or municipality shall establish a procedure for a property owner to appeal a stormwater remediation fee imposed under this section.

(h) (1) (i) If a county or municipality establishes a stormwater remediation fee under this section, the county or municipality shall determine the method, frequency, and enforcement of the collection of the stormwater remediation fee.

(ii) A county or municipality shall include the following statement on a bill or on an insert to a bill to collect a stormwater remediation fee: “This is a local government fee established in response to federal stormwater management requirements. The federal requirements are designed to prevent local sources of pollution from reaching local waterways.”.

(2) A county or municipality shall deposit any stormwater remediation fees it collects into its local watershed protection and restoration fund.

(3) There shall be deposited in a local watershed protection and restoration fund:

(i) Any funds received from the stormwater remediation fee;

(ii) Funds received under subsections (c)(2) and (e)(2) of this section;

(iii) Interest or other income earned on the investment of money in the local watershed protection and restoration fund; and

(iv) Any additional money made available from any sources for the purposes for which the local watershed protection and restoration fund has been established.

(4) Subject to paragraph (5) of this subsection, a county or municipality shall use the money in its local watershed protection and restoration fund for the following purposes only:

(i) Capital improvements for stormwater management, including stream and wetland restoration projects;

(ii) Operation and maintenance of stormwater management systems and facilities;

(iii) Public education and outreach relating to stormwater management or stream and wetland restoration;

(iv) Stormwater management planning, including:

1. Mapping and assessment of impervious surfaces;
and

2. Monitoring, inspection, and enforcement activities to carry out the purposes of the watershed protection and restoration fund;

(v) To the extent that fees imposed under § 4-204 of this subtitle are deposited into the local watershed protection and restoration fund, review of stormwater management plans and permit applications for new development;

(vi) Grants to nonprofit organizations for up to 100% of a project's costs for watershed restoration and rehabilitation projects relating to:

1. Planning, design, and construction of stormwater management practices;

2. Stream and wetland restoration; and

3. Public education and outreach related to stormwater management or stream and wetland restoration; and

(vii) Reasonable costs necessary to administer the local watershed protection and restoration fund.

(5) A county or municipality may use its local watershed protection and restoration fund as an environmental fund, and may deposit to and expend from the fund additional money made available from other sources and dedicated to environmental uses, provided that the funds received from the stormwater

remediation fee, if any, are expended only for the purposes authorized under paragraph (4) of this subsection.

(6) Money in a local watershed protection and restoration fund may not revert or be transferred to the general fund of any county or municipality.

(i) A county or municipality shall report annually, in a manner determined by the Department, on:

(1) The number of properties subject to a stormwater remediation fee, if any;

(2) Any funding structure developed by the county or municipality, including the amount of money collected from each classification of property assessed a fee, if any;

(3) The amount of money deposited into the watershed protection and restoration fund in the previous fiscal year by source;

(4) The percentage and amount of funds in the local watershed protection and restoration fund spent on each of the purposes provided in subsection (h)(4) of this section;

(5) All stormwater management projects implemented in the previous fiscal year; and

(6) Any other information that the Department determines is necessary.

(j) (1) (i) On or before July 1, 2016, and every 2 years thereafter on the anniversary of the date of issuance of its national pollutant discharge elimination system Phase I municipal separate storm sewer system permit, a county, including Montgomery County, or municipality shall file with the Department a financial assurance plan that clearly identifies:

1. Actions that will be required of the county or municipality to meet the requirements of its national pollutant discharge elimination system Phase I municipal separate storm sewer system permit;

2. Projected annual and 5-year costs for the county or municipality to meet the impervious surface restoration plan requirements of its national pollutant discharge elimination system Phase I municipal separate storm sewer system permit;

3. Projected annual and 5-year revenues or other funds that will be used to meet the costs for the county or municipality to meet the impervious surface restoration plan requirements of its national pollutant discharge elimination system Phase I municipal separate storm sewer system permit;

4. Any sources of funds that will be utilized by the county or municipality to meet the requirements of its national pollutant elimination system Phase I municipal separate storm sewer system permit; and

5. Specific actions and expenditures that the county or municipality implemented in the previous fiscal years to meet its impervious surface restoration plan requirements under its national pollutant discharge elimination system Phase I municipal separate storm sewer system permit.

(ii) A county or municipality that files a financial assurance plan under subsection (c)(2) of this section shall file on or before July 1, 2016, a financial assurance plan that meets the requirements of paragraph (4) of this subsection.

(2) A financial assurance plan shall demonstrate that the county or municipality has sufficient funding in the current fiscal year and subsequent fiscal year budgets to meet its estimated costs for the 2-year period immediately following the filing date of the financial assurance plan.

(3) A county or municipality may not file a financial assurance plan under this subsection until the local governing body of the county or municipality:

- (i) Holds a public hearing on the financial assurance plan; and
- (ii) Approves the financial assurance plan.

(4) (i) Subject to subparagraphs (ii) and (iii) of this paragraph, the Department shall make a decision whether the financial assurance plan demonstrates sufficient funding within 90 days after the county or municipality filed the financial assurance plan with the Department.

(ii) For a financial assurance plan that is filed on or before July 1, 2016, funding in the financial assurance plan is sufficient if the financial assurance plan demonstrates that the county or municipality has dedicated revenues, funds, or sources of funds to meet, for the 2-year period immediately following the filing date of the financial assurance plan, 75% of the projected costs of compliance with the impervious surface restoration plan requirements of the county or municipality under its national pollutant discharge elimination system Phase I municipal separate storm sewer system permit over that 2-year period.

(iii) For the filing of a second and subsequent financial assurance plan, funding in the financial assurance plan is sufficient if the financial assurance plan demonstrates that the county or municipality has dedicated revenues, funds, or sources of funds to meet, for the 2-year period immediately following the filing date of the financial assurance plan, 100% of the projected costs of compliance with the impervious surface restoration plan requirements of the county or municipality under its national pollutant discharge elimination system Phase I municipal separate storm sewer system permit over the 2-year period.

(5) (i) If the Department determines that the funding in the financial assurance plan filed on or before July 1, 2016, is insufficient to meet, for the 2-year period immediately following the filing date of the financial assurance plan, 75% of the projected costs of compliance with the impervious surface restoration plan requirements of the county or municipality under its national pollutant discharge elimination system Phase I municipal separate storm sewer system permit, the Department shall issue a warning to the county or municipality and engage with the county or municipality on the development of a plan for meeting the projected costs of compliance.

(ii) 1. If the Department determines that the funding in the second or subsequent financial assurance plan is insufficient to meet, for the 2-year period immediately following the filing date of the financial assurance plan, 100% of the projected costs of compliance with the impervious surface restoration plan requirements of the county or municipality under its national pollutant discharge elimination system Phase I municipal separate storm sewer system permit, in addition to any other remedy available at law or in equity the Department shall impose an administrative penalty of:

A. For a first offense, up to \$5,000 for each day until the funding in the financial assurance plan is determined to be sufficient in accordance with paragraph (4)(iii) of this subsection; and

B. For a second and subsequent offense, up to \$10,000 for each day until the funding in the financial assurance plan is determined to be sufficient in accordance with paragraph (4)(iii) of this subsection.

2. Any penalty collected by the Department from a county or municipality under this subparagraph shall be paid into an escrow account to be used by the county or municipality for stormwater management projects pending a determination by the Department that funding in the financial assurance plan is sufficient.

(6) A financial assurance plan required under this subsection shall be made publicly available on the Department's website within 14 days after the county or municipality filed the financial assurance plan with the Department.

(7) Beginning September 1, 2016, and every year thereafter, the Department shall submit a report evaluating the compliance of counties and municipalities with the requirements of this section to the Governor and, in accordance with § 2-1257 of the State Government Article, the Senate Education, Health, and Environmental Affairs Committee and the House Environment and Transportation Committee.

(k) (1) If a county or municipality establishes a stormwater remediation fee under this section, the county or municipality shall establish a program to exempt from the requirements of this section any property able to demonstrate substantial financial hardship as a result of the stormwater remediation fee.

(2) A county or municipality may establish a separate hardship exemption program or include a hardship exemption as part of a system of offsets established under subsection (f)(1) of this section.

(3) (i) A county or municipality shall authorize a charitable nonprofit group or organization that is exempt from taxation under § 501(c)(3) or (d) of the Internal Revenue Code and can demonstrate substantial financial hardship to implement an alternate compliance plan in lieu of paying a stormwater remediation fee for property owned by the group or organization.

(ii) 1. Subject to subsubparagraph 2 of this subparagraph, the Department may adopt regulations to establish the alternate compliance plan authorized under subparagraph (i) of this paragraph.

2. The regulations adopted by the Department under subsubparagraph 1 of this subparagraph do not apply in a county that has implemented an alternate compliance program before July 1, 2015.

(l) The Department may adopt regulations to implement and enforce this section.

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